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**Attorneys for Plaintiff,
TERRI BYRUM**

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

TERRI BYRUM,

Plaintiff,

VS.

LIFE INSURANCE COMPANY OF
NORTH AMERICA; APOLLO
EDUCATION GROUP, INC. LONG
TERM DISABILITY PLAN.

Defendants.

CASE NO:

COMPLAINT FOR:

BREACH OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974; ENFORCEMENT AND CLARIFICATION OF RIGHTS; PRE-JUDGMENT AND POST- JUDGMENT INTEREST; AND ATTORNEYS' FEES AND COSTS

Plaintiff, Terri Byrum, herein sets forth the allegations of her Complaint against Defendants Life Insurance Company of North America (“LINA”) and Apollo Education Group, Inc. Long Term Disability Plan (the “Plan”).

PRELIMINARY ALLEGATIONS

1. “Jurisdiction” – This action is brought under 29 U.S.C. §§ 1132(a), (e), (f) and (g) of the Employee Retirement Income Security Act of 1974 (hereinafter “ERISA”) as it involves a claim by Plaintiff for employee benefits under an employee benefit plan regulated and governed under ERISA. Jurisdiction is

1 predicated under these code sections as well as 28 U.S.C. § 1331 as this action
2 involves a federal question. This action is brought for the purpose of recovering
3 benefits, enforcing Plaintiff's rights, and to clarify Plaintiff's rights to future
4 benefits under the employee benefit plan named as Defendant. Plaintiff seeks relief,
5 including but not limited to: payment of benefits, pre-judgment and post-judgment
6 interest, reinstatement to the benefit plans at issue herein, and attorneys' fees and
7 costs.

8 2. Plaintiff was, at all times relevant, an employee of Apollo Education
9 Group, Inc. ("Apollo"), and a resident in the State of Arizona.

10 3. Plaintiff is informed and believes that Defendant LINA is a corporation
11 with its principal place of business in the State of Connecticut, authorized to transact
12 and transacting business in the Central District of California, and can be found in the
13 Central District of California. Plaintiff is informed and believes that her employer's
14 Plan was funded in whole or in part via the purchase of an insurance policy from
15 LINA. LINA is the insurer of all or some portion of benefits under the Plan. LINA
16 administered the claim, interpreted Plan terms, and issued a claim denial, all while
17 operating under a conflict of interest; and the bias this created adversely affected the
18 claims determination. Plaintiff is informed and believes that LINA rendered
19 decisions regarding Plaintiff's benefit claims in its Glendale, California claims
20 office.

21 4. Plaintiff is informed and believes that LINA identifies the group policy
22 it issued to Apollo as Policy No. FLK-980124 (the "Policy"). Plaintiff is informed
23 and believes that the Policy has a Policy Effective Date of August 1, 2012, and has a
24 Policy Anniversary Date of January 1.

25 5. Plaintiff is informed and believes that Defendant Plan is an employee
26 welfare benefit plan regulated by ERISA, established by Apollo, under which
27 Plaintiff is and was a participant, and pursuant to which Plaintiff is entitled to
28 benefits. Pursuant to the terms and conditions of the Plan, Plaintiff is entitled to

long-term disability (“LTD”) benefits for the duration of Plaintiff’s disability, for so long as Plaintiff remains disabled as required under the terms of the Plan.

6. Defendants can be found in this judicial district and the Defendant Plan is administered in this judicial district. The LTD claim at issue herein was also specifically administered in this judicial district. Thus, venue is proper in this judicial district pursuant to 29 U.S.C. § 1132(e)(2).

FIRST CLAIM FOR RELIEF

**AGAINST DEFENDANTS LIFE INSURANCE COMPANY OF NORTH
AMERICA AND APOLLO EDUCATION GROUP, INC. LONG TERM
DISABILITY PLAN FOR PLAN BENEFITS, ENFORCEMENT AND
CLARIFICATION OF RIGHTS, PRE-JUDGMENT AND POST-JUDGMENT
INTEREST, AND ATTORNEYS' FEES AND COSTS**

7. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.

8. At all times relevant, Plaintiff was employed by Apollo, and was a covered participant under the terms and conditions of the Plan.

9. During the course of Plaintiff's employment, Plaintiff became entitled to benefits under the terms and conditions of the Plan. Specifically, while Plaintiff was covered under the Plan, Plaintiff suffered a disability rendering Plaintiff disabled as defined under the terms of the Plan due to, among other things, Systemic Lupus Erythematosus ("lupus" or "SLE"), fibromyalgia, osteoarthritis, degenerative disc disease, chronic obstructive pulmonary disease ("COPD"), hypertension, Legionnaires' pneumonia, Raynaud's Syndrome, depression, and anxiety. Plaintiff ceased work on or about December 6, 2012.

10. Pursuant to the terms of the Plan, Plaintiff made her claim for disability benefits to LINA. LINA approved her claim for short term disability (“STD”)

1 benefits, and then LTD benefits when they became effective on or about March 13,
2 2013. Due to her disability, Plaintiff's claim for Life Insurance Waiver of Premium
3 ("LWOP") was also approved. However, by letters dated January 6, 2014 and
4 January 7, 2014, LINA discontinued her LTD and LWOP benefits, respectively.
5 Plaintiff timely appealed LINA's decisions, but LINA upheld the denials by letter
6 dated March 6, 2014.

7 11. Plaintiff then submitted optional, second-level appeals of the denials.
8 By letter dated May 28, 2014, LINA again denied Plaintiff's LWOP claim, but
9 offered Plaintiff yet another appeal. However, by letter also dated May 28, 2014,
10 LINA overturned its prior LTD decision and reinstated Plaintiff's LTD benefits.
11 Yet, less than a month later LINA reversed course and discontinued Plaintiff's LTD
12 benefits by letter dated June 26, 2014. The June 26, 2014 denial was based on
13 information LINA claimed it had in its possession prior to its May 28, 2014
14 decision to reinstate benefits:

15 "It has been determined based on the Occupational Analysis
16 dated May 27, 2014 and the Peer Review Report dated May 15,
17 2014 that you would have been able to return to work, full time,
18 in your own occupation by June 2014."

19 12. Understandably confused by LINA's inconsistent claim handling,
20 Plaintiff retained counsel to assist with further appeals. After obtaining extensions
21 from LINA, Plaintiff timely appealed both the LTD and LWOP denials by letter
22 dated February 26, 2015. Without having received a claim decision within the 90
23 days allowed under ERISA, Plaintiff filed suit in this District on or about June 9,
24 2015. Shortly thereafter, by letter dated July 15, 2015, LINA overturned its prior
25 decision and reinstated Plaintiff's LTD benefits. LINA, however, did not address
26 Plaintiff's claim for LWOP benefits. The prior lawsuit was dismissed on July 21,
27 2015.

1 13. LINA continued to pay Plaintiff's LTD claim for some time, but by
2 letter dated February 23, 2017, LINA again discontinued Plaintiff's LTD benefits,
3 owing in large part to a gap in medical treatment for much of 2016 due to
4 circumstances outside of Plaintiff's control. Attached hereto as Exhibit 1 is
5 Plaintiff's personal statement regarding the physical and psychological abuse she
6 endured at the hands of her now ex-husband, which includes details about how he
7 prevented her from receiving medical care for her myriad conditions. Exhibit 1 was
8 included as part of the appeal submitted on August 22, 2017. Despite the foregoing,
9 LINA erroneously and wrongfully upheld its denial of LTD benefits by letter dated
10 January 10, 2018. Defendants LINA and the Plan breached the Plan and violated
11 ERISA in the following respects:

12 (a) They failed to provide LTD and LWOP benefit payments to
13 Plaintiff at a time when Defendants knew, or should have known, that
14 Plaintiff was entitled to those benefits under the terms of the Plan, as Plaintiff
15 was disabled and unable to work and therefore entitled to benefits. Even
16 though Defendants had such knowledge, LINA denied Plaintiff's LTD and
17 LWOP benefits;

18 (b) They failed to provide a prompt and reasonable explanation of
19 the basis relied on under the terms of the Plan documents, in relation to the
20 applicable facts and Plan provisions, for the effective denial of Plaintiff's
21 claims for LTD and LWOP benefits;

22 (c) After Plaintiff's claim was effectively denied, LINA failed to
23 adequately describe to Plaintiff any additional material or information
24 necessary for Plaintiff to perfect her claims along with an explanation of why
25 such material is or was necessary;

26 (d) They concealed and withheld from Plaintiff the notice
27 requirements Defendants were required to provide Plaintiff pursuant to
28 ERISA and the regulations promulgated thereunder, particularly Code of

1 Federal Regulations § 2560.503-1(f)-(g), inclusive; and

2 (e) They failed to properly and adequately investigate the merits of
3 Plaintiff's claims and failed to provide a full and fair review of Plaintiff's
4 claims.

5 14. Plaintiff is informed and believes and thereon alleges that Defendants
6 wrongfully denied her benefits under the Plan by other acts or omissions of which
7 Plaintiff is presently unaware, but which may be discovered in this future litigation
8 and which Plaintiff will immediately make Defendants aware of once said acts or
9 omissions are discovered by Plaintiff.

10 15. Following the denial of benefits under the Plan, Plaintiff exhausted all
11 administrative remedies required under ERISA, and Plaintiff has performed all
12 duties and obligations on Plaintiff's part to be performed under the Plan.

13 16. As a proximate result of the aforementioned wrongful conduct of
14 Defendants, Plaintiff has damages for loss of disability benefits in a total sum to be
15 shown at the time of trial.

16 17. As a further direct and proximate result of this improper determination
17 regarding Plaintiff's LTD claim, Plaintiff in pursuing this action has been required
18 to incur attorneys' costs and fees. Pursuant to 29 U.S.C. § 1132(g)(1), Plaintiff is
19 entitled to have such fees and costs paid by Defendants.

20 18. The wrongful conduct of Defendants has created uncertainty where
21 none should exist, therefore Plaintiff is entitled to enforce her rights under the terms
22 of the Plan and to clarify her right to future benefits under the terms of the Plan.

23
24 **REQUEST FOR RELIEF**

25 WHEREFORE, Plaintiff prays for relief against Defendants as follows:

26 1. Payment of disability benefits due Plaintiff;

27 2. An order declaring that Plaintiff is entitled to immediate reinstatement
28 to the Plan, with all ancillary benefits to which she is entitled by virtue of her

1 disability, and that benefits are to continue to be paid under the Plan for so long as
2 Plaintiff remains disabled under the terms of the Plan;

3 3. In the alternative to the relief sought in paragraphs 1 and 2, an order
4 remanding Plaintiff's claim to the claims administrator to the extent any new facts
5 or submissions are to be considered;

6 4. Pursuant to 29 U.S.C. § 1132(g), payment of all costs and attorneys'
7 fees incurred in pursuing this action;

8 5. Payment of pre-judgment and post-judgment interest as allowed for
9 under ERISA; and

10 6. Such other and further relief as this Court deems just and proper.

12 DATED: May 21, 2018

KANTOR & KANTOR, LLP

14 By: /s/ Mitchell O. Hefter
15 Mitchell O. Hefter
16 Attorneys for Plaintiff
TERRI BYRUM

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EXHIBIT 1

My Story 2016-2017
Terri Byrum

To Whom It May Concern,

This is difficult for me to write about what has happened to me but I will do my best to be as clear and detailed as possible. I have been a victim of domestic violence for the past several years. I have been both physically and mentally abused by my husband and currently in the infancy stages of beginning to process all that has happened to me over these past years. At this point I am not sure I understand how and why this has happened to me and I am struggling to try and understand how I could have ever ended up in this situation. I am writing this for several reasons with the initial reason to explain my lack of medical care specifically over this past year. I will attempt to be as detailed as I possibly can so who ever is reading this will have a clear understanding of my past and current situation. My Primary Care doctor Melody Fagen as well as my counselor Stephen McLaughlin who has referred me to psychiatrist to begin medication for anxiety and PTSD has diagnosed me with PTSD.

My husband has tried to kill me, assaulted me, emotionally abused me, held me captive, denied me the ability to speak with friends or family, get medical care or see doctors on a regular basis. He also would keep my medications from me when he was angry. He took control of all the money, moved me out of Arizona to his hometown in Ohio away from all my family and my friends in order to have complete control over me. He wanted to control over all my actions, who I spoke to, who I was allowed to speak to on the phone, where I went, and who I was able to be friends with. All of this I know sounds typical for an abuser and even as I write this I can hardly believe I didn't see any of it at the time but I did not.

We moved to Ohio around August 2015. Here is where things took a drastic turn for me. He turned into someone I didn't even recognize, took control of all the money and would make sure there was little to nothing in our account. I remember pleading with him to get health insurance on multiple occasions but he refused. I have been incredibly sick on more than one occasion, unable to make a phone call for help as he continued to refuse to take me to the hospital or doctor claiming I would be alright and it is just part of my illness. He said we had enough medical bills already and we could not afford anymore. Often times he would then leave me alone while he went out drinking, however he only did this when he was sure I wasn't capable of leaving or calling for help. I had thought he was right as I had been programmed to believe I was being a burden to him and my healthcare was also a burden and that I just needed to be patient and I would get better. I had no idea at the time his intention was for me to die from my illness without proper medical care.

The few times I did try and leave to get help so I could get to the hospital, he would restrain me, pick a fight and sometimes beat me and make sure I did not leave the house or make any phone calls. He would take my phone from me and not allow me to have it for fear I would call for help or leave. During these times I was so

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incredibly sick I thought I just might die and lacked the energy or drive to do anything about it except wait for my life to be over.

December 2016 – I went to E.R. with strained shoulder. I told the E.R. that my injury was due to slipping on the ice on the steps leading up to my front porch. This was not true, as my husband had injured me the night before during a physical and verbal altercation. He was drunk and enraged and beat me. I attempted to get out of the house but he would not let me. He trapped me upstairs got his gun out and threatened to kill us both. He told me when I asked to leave until he calmed down that “Neither one of us are getting out of here alive”. I truly was in fear for my life, as I believed he was really going to kill me. I began pleading with him and begging him to stop but he did not. I eventually gave up trying to get away or beg him. The beating and arguing lasted until 4 am in the morning. I had reached a point of resignation that this was the end for me. I couldn’t take anymore emotionally or physically. I resigned myself that he was going to kill me and waited for the gun to go off. This was the night he completely broke me. I thought if he would just get it over quickly, I could go to heaven and this torment would be over. I remember telling him to just go ahead and do it that I am done fighting and I couldn’t do it anymore. I told him I just wanted to go be with Jesus and to just get it over with. I put my head down and waited. I was completely broken and honestly didn’t care what happened to me at that point. I wanted to die. I felt trapped with no money and no place to go. I knew I had been broken and had given up.

The next day I was having difficulty breathing, coughing and felt like I had bronchitis. He would not take me to the hospital for about a week until my friend came over and told him he needed to get me to the hospital or she would. When I was in the E.R. my breathing was so labored I could hardly speak. My oxygen saturation was 80 and couldn’t stop coughing. While the doctors and nurses were working on me and getting ready to admit me, he left me there by myself and went to go drinking at 2 different bars. Eventually my friend came up to be with me once she found out what was going on and stayed with me.

January 2017 – I spent the last part of December and 3 weeks into January recovering from pneumonia. During this time, my husband was going to concerts and hanging out in the bar every night and did not stay home to help take care of me. It was my friend Vicki who came over and took care of me everyday. On January 18th Vicki came over and asked if I felt like getting out of the house for a little bit as I had been cooped up at home sick since December. I was feeling better so I thought it would be a good idea. We spent the day together and part of the evening just relaxing and attempting to visit with my friends I hadn’t seen in nearly a month. It was this night that everything came to a head. He found me with my girlfriends and demanded I come home. At first I tried to tell him I didn’t want to go as I was having a good time and wanted to visit for a little while. I could tell he was getting more and more angry so I went with him in hopes of avoiding a big argument or a scene in front of my friends.

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It was this night that I received the worst beating I have ever received. He had completely snapped right before my eyes and I knew there would be no reasoning with him. The physical fight started at around 9 pm and lasted until somewhere around 2 am. At 2 am I began to vomit uncontrollably every 5 minutes, which lasted until about 4:30 am. At this point he made me go to bed with him but I still could not stop throwing up. Every time I got up to vomit, he would follow me to the bathroom to make sure I wasn't going to try and leave. I would go back to bed and lay there awake as still as possible waiting for him to go to sleep so I could escape.

At around 6:30 am I got up to use the bathroom and he did not follow me. I was so scared and thought it was a trap and that he was really awake so I went back to bed and laid there until about 8:30-9 am. I got up again to use the restroom and he didn't move or follow me. I went downstairs still fearful he was awake I sat down and got on my computer, listening to see if I heard any footsteps upstairs. I thought if he was awake and came down he wouldn't suspect I was trying to get away. He had broken my phone the night before so I was unable to call anyone. Once I was confident he was sleeping, I grabbed the keys and left the house as quickly as I could. I drove to my friend Vicki's house in a panic.

Vicki took me to a shelter for domestic violence where I stayed a couple of days. I have contacted the police and filed a report, went to the hospital at the advice from the shelter to get x-rays as my wrist was incredibly bruised and swollen and thought it may have been broken along with my ribs.

The vomiting came back and within about a week and ½ I was admitted to the hospital with severe dehydration. The amount of vomiting I did caused my esophagus to be burned and I was unable to eat or drink anything for 7 days. I couldn't swallow anything. I had been so "programmed" by my husband that I would be all right, I didn't go to the hospital. It was when my friends came over and I couldn't get up off the couch that they took me to the hospital. I am convinced I would have died that weekend had they not come over to check on me.

I currently am dealing with all of this through the court systems. I have pressed charges. I am involved in the criminal and civil investigations as well as divorce proceedings. As of today he is still stalking me and the threat to my life is very real. I am taking the measures I need in order to keep myself safe.

For 2016 here are a few episodes I can remember that were not documented in my regular medical records –

January 2016 – I had an anxiety attack after he had beaten me. This caused me not to be able to breath correctly and I began to hyperventilate and felt like I could not get enough air into my lungs. Additionally I began vomiting and coughing. Since this attack had lasted so long, my breathing was unstable for quite sometime. I began

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getting light headed and eventually lost consciousness. I believe this is what caused the respiratory infection to develop. I was unable to breath correctly and could not stop coughing. My husband refused to allow me use of my rescue inhaler, which only increased my symptoms and decreased my ability to fight off the illness. I was sick at home for weeks. I felt like I had bronchitis, which turned into pneumonia, and at the time I didn't feel like there was anything I could do about it. I was too weak and tired to argue and I had begun to believe that if I just rested I would get better.

March 2016 – My cough from January had continued and I found that I could not sleep lying down. I would cough all night and since I was irritating my husband and keeping him up at night, I began to sleep down on the couch. This caused additional problems for me since I have arthritis in my back, hip, knee and neck, the couch proved to be very painful for me to sleep on, but I felt I had no choice. My joints would be swollen in the morning and I would be so stiff I could hardly move. There was a time when my husband would help me get up and get moving, but he no longer did this.

April 2016 – My cough continues. I had 3 Fibromyalgia Flares; passed 2 kidney stones at home.

May 2016 – Still coughing and sleeping on the couch. Had 4 Fibromyalgia Flares, Arthritis pain in my lower back and nerve pain down my leg. I was unable to do much of anything while the inflammation in my back healed. I tried sleeping in the chair as the couch was hurting my back so bad. This month I had approximately 13 panic attacks. The abuse from my husband felt like it was increasing and a feeling of helplessness had started to over-take me.

June 2016 – I begin vomiting several times a week. I thought it might be a flu bug at first, but it continued through the month and into July. My panic attacks increased as well as my depression and anxiety. I had 3 Fibromyalgia Flares in addition to the vomiting. The last week of the month my joints in my hands, wrists, ankles and knee were swollen. I was barley able to move my fingers to even hold a glass of water. My cough continues.

July 2016 – Severe depression has set in and for the first time I want to give up. I am tired of being sick. I am tired of all the arguing. My brain simply wants to shut down and go to other places. I begin to wonder if life is even worth it. I don't feel suicidal but spend most of my time wondering how much longer I have to live. Vomiting lets up but Fibro, pain, anxiety continues to increase through the month.

August 2016 - I have Fibromyalgia flares on a regular basis, which can last a couple of days at a time. When this happens I can barley get out of bed due to the pain and spend lots of time sleeping. During these flares all I wanted to do was sleep, not move and stay in bed. I am unable to take care of myself properly and have had a

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friend come to help take care of me. I do understand I need to be on medication for this, but have not been able to get what I need. During these times my friend has helped me take a shower, cook and do laundry. I am so very thankful for her as I wouldn't have been able to do it myself.

Now I must learn how to deal with PTSD. I am not sleeping properly due to night terrors, my anxiety has increased tenfold, I have flashbacks on a daily basis, and live in constant fear that I am going to turn around and he is going to be standing there. I hear his voice telling me he is coming for me and that he is not done with me yet. His voice says I will never be able to leave him. I feel nothing but terrified everyday. I can't think clearly and my emotions are all over the place. I am starting to have hallucinations of him being in my house. They are so real and terrifying to me that my anxiety I feel is now out of control. My blood pressure continues to increase in spite of having my dosage doubled. I am thankful next week I see the psychiatrist and hope medication will help me.

I also now know that his intention was to make sure I died from my illness. He had decided at some point it would be easier if I died so he would end up with everything. He increased the pressure on me, purposely causing more stress for me knowing it would make me ill.

Please let me know if you need more details or have any questions.

Terri Byrum